

ASSEMBLY BILL

No. 2820

**Introduced by Assembly Members Cardenas, Correa, and
Wiggins**

February 25, 2002

An act to add Section 17538.43 to the Business and Professions Code, relating to facsimiles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2820, as introduced, Cardenas. Unsolicited facsimiles.

Existing law prohibits a person conducting business in this state from faxing unsolicited advertising material, unless certain conditions are met. These conditions include that the person or entity establishes a toll-free telephone number that a recipient of the unsolicited faxed documents may call to notify the sender not to fax the recipient any further unsolicited documents.

This bill would require that a company engaged in the business of faxing unsolicited advertising material have a reliable toll-free telephone number with a mechanism allowing a solicited person or entity to call and opt-out immediately from further unsolicited advertising faxes, and allowing the company to recognize an opt-out call and to respond to the solicited person or entity with a date and time that the consumer has been removed from the faxing list. The bill would require a company to provide the solicited person or entity with this information. The bill would also give a solicited person or entity a cause of action against a company that either (1) violates these provisions or (2) faxes to a person or entity who has asked to be removed from further solicitation. The bill further provides that the company bears the cost

of maintaining the toll-free telephone number system and responding to calls received through that system.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17538.43 is added to the Business and
2 Professions Code, to read:

3 17538.43. (a) No company in the business of sending
4 unsolicited advertising material shall do business in California
5 until it has a reliable 800 telephone number mechanism, created
6 and maintained by that company, that does the following:

7 (1) Allows a person or entity solicited by fax to call the number
8 and opt-out of receiving further unsolicited advertising faxes from
9 that company immediately.

10 (2) Allows the company to recognize that it is in receipt of a call
11 made pursuant to paragraph (1).

12 (3) Allows the company to respond to the request made
13 pursuant to paragraph (1), and to give the solicited person or entity
14 a date and time at which they have been removed from further
15 solicitation by the company. A solicited person or entity shall be
16 given this information by the company after utilizing the toll-free
17 telephone number mechanism.

18 (b) (1) Any person or entity that has received an unsolicited
19 advertising fax in violation of subdivision (a), may bring a civil
20 action in small claims court for an injunction or order to prevent
21 further violations.

22 (2) (A) If a person or entity obtains an injunction or order
23 under paragraph (1), and service of the injunction or order is
24 properly effected, a person or entity that thereafter receives further
25 solicitations in violation of the injunction or order within 30 days
26 after service of the initial injunction or order, may file a subsequent
27 action in small claims court seeking enforcement of the injunction
28 or order and a civil penalty to be awarded in an amount to be
29 determined by the court.

30 (B) For purposes of this paragraph, the claims may not be
31 aggregated to establish jurisdiction in a court other than small
32 claims court.



1 (C) For purposes of this paragraph, a defendant is not required
2 to personally appear, but may appear by affidavit or by written
3 instrument.

4 (3) The rights, remedies, and penalties established by this
5 section are in addition to the rights, remedies, or penalties
6 established under other laws.

7 (4) It shall be an affirmative defense to any action brought
8 under this section that the violation was accidental and contrary to
9 the company's policies and procedures and employee instruction
10 and training.

11 (c) The cost of creating and maintaining the mechanisms
12 required by subdivision (a) shall be paid by the company.

